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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR
THE RESTORATION OF THE
ENVIRONMENT, a Washington
nonprofit corporation, FRIENDS OF
TOPPENISH CREEK, a Washington
nonprofit corporation, and CENTER
FOR FOOD SAFETY, a Washington,
DC nonprofit corporation

Plaintiffs,

v.

SUNNYSIDE DAIRY, LLC.

Defendant.

Case No. 1:20-CV-3128-TOR
CONSENT DECREE

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EXHIBITS

18	Exhibit 1:	Aerial Photograph/Map
19	Exhibits 2a, 2b, 2c:	Application Fields Maps (Main Dairy Fields, Airport Fields, Port Fields)
20	Exhibit 3:	Lagoon and Basin Basis of Design Report
21	Exhibit 4:	Monitoring Well Installation and Groundwater Monitoring Plan
22	Exhibit 5:	Stormwater Engineering Plan
23	Exhibit 6:	Cow Pen Maintenance Plan
24	Exhibit 7:	Silage Area Drainage Improvements
25	Exhibits 8A-8B:	Upper Compost Area Improvements; Lower Compost Area Improvements

Exhibit 9: Compost Operations Plan
Exhibit 10: Soil moisture sensors maps
Exhibit 11: Records Defendant shall provide pursuant to
Paragraph 61
Exhibit 12: Three-mile radius downgradient of the Dairy
Exhibit 13: Engineering Water Balance

*****EXHIBITS 1 THROUGH 13 ARE ON FILE HEREIN AND
FILED AT ECF NOS. 2-2 THROUGH 2-14 AND ARE HEREBY
INCORPORATED IN FULL BY THIS REFERENCE. Signed
Thomas O. Rice, United States District Judge.*****

1 WHEREAS, the Plaintiffs, Community Association for Restoration of
2 the Environment, Inc. (“CARE”), Friends of Toppenish Creek, and Center
3 for Food Safety (together, the “Plaintiffs”), filed a Complaint simultaneously
4 with this Consent Decree against Sunnyside Dairy, LLC (“Defendant” or
5 “Sunnyside”) (the “Parties” collectively or a “Party” in the singular),
6 alleging violations of the Resource Conservation and Recovery Act, 42
7 U.S.C. § 6901, et seq. (“RCRA”), and seeking declaratory and injunctive
8 relief, civil penalties and attorneys’ fees and costs; and

9 WHEREAS, Plaintiffs’ claims and this Consent Decree relate to the
10 dairy operations and facilities that are the subject of the Complaint and 90-
11 Day Notice of Intent (“90-Day Notice”) filed in this action; and

12 WHEREAS, Defendant denies Plaintiffs’ claims, allegations, and any
13 liability for the alleged violations; and

14 WHEREAS, Plaintiffs and Defendant agree that settlement of these
15 matters is in the best interest of the Parties and the public, and that entry of
16 this Consent Decree without additional litigation is the most appropriate
17 means of resolving this action; and

18 WHEREAS, Plaintiffs and Defendant, after consultation with their
19 respective counsel and without trial or final adjudication of the issues of fact
20 or law with respect to Plaintiffs’ claims or allegations, consent to the entry
21 of this Decree in order to avoid the risks of litigation and to resolve the
22 controversy between them;

23 NOW, THEREFORE, without trial of any issue of fact or law, and
24 without admission by Defendant of the facts or violations alleged in the
25 Complaint or the 90-Day Notice, and upon consent of the Parties, and upon

1 consideration of the mutual promises herein contained, it is hereby
2 ORDERED, ADJUDGED AND DECREED as follows:

3 **A. General Provisions**

4 1. This Court has jurisdiction over the Parties and subject matter
5 of this action pursuant to 42 U.S.C. § 6972 and 28 U.S.C. § 1331.

6 2. Venue is proper in this Court pursuant to 42 U.S.C. § 6972(a),
7 and 28 U.S.C. § 1391(b) and § 1395(a).

8 3. The undersigned representative for each Party certifies that
9 he/she is fully authorized by the Party or Parties whom he/she represents to
10 enter into the terms and conditions of this Decree and to legally bind the
11 Party or Parties to it.

12 4. Located in the Sunnyside area of Eastern Washington,
13 Defendant is comprised of three adjacent dairies, known as the “Little
14 Dairy”, the “Upper Dairy,” and the “Lower Dairy” (as shown in Exhibit 1)
15 and meets the federal and state law definitions of a large concentrated
16 animal feeding operation. Defendant’s office is located at 4581 Maple
17 Grove Road, Sunnyside, WA 98944.

18 5. For this Decree, the term “Dairy” shall refer to (1) the
19 operational and process facilities, including manure storage lagoons, as
20 shown in the map on the aerial photograph attached as Exhibit 1 hereto
21 (hereafter the “Production Area” as defined in 40 CFR 122.23(b)(8)); and
22 (2) the manure application fields owned, leased, or otherwise controlled by
23 Defendant (hereafter the “Application Fields”). The term Application
24 Fields does not include any field on which Defendant or an affiliated entity
25 ceases manure application and which Defendant removes from its Dairy
26

1 Nutrient Management Plan (“DNMP”). As of the date of this Decree, the
2 Application Fields consist of the fields depicted in Exhibit 2a (known as
3 the “Main Dairy Fields”), Exhibit 2b (known as the “Airport Fields”), and
4 Exhibit 2c (known as the “Port Fields”). Collectively, the dairy activities
5 conducted by Defendant within the Production Area and Application Fields
6 are referred to herein as “Dairy Operations”.

7 6. This Decree shall apply to and be binding upon the Parties to
8 this action, and upon the successors and assigns of the Parties. This
9 provision is intended to require full compliance with this Consent Decree
10 so long as the Dairy is used by any affiliated person or entity in the course
11 of conducting Dairy Operations at the Dairy; provided that nothing herein
12 shall prevent Defendant from discontinuing its Dairy Operations, in whole
13 or in part, at the Dairy, or from transferring any or all of the Dairy
14 (including one or more of the Application Fields) to other entities for dairy
15 operations or for uses other than for Dairy Operations. Should any such
16 discontinuance of Dairy Operations occur on any or all of the Dairy, this
17 Decree shall no longer apply to any such portion of the Dairy that is not
18 being used for Dairy Operations or other agriculturally-related operations
19 that involve the application of manure produced by the Dairy Operations
20 (i.e., one or more of the Application Fields). Defendant, or any of its
21 successors or assigns, may sell or otherwise transfer interest in the Dairy
22 (including but not limited to one or more of the Application Fields, or any
23 of the real property upon which the Dairy is situated or where Dairy
24 Operations are conducted, in whole or in part), without Plaintiffs’ consent
25 and without approval of the Court; provided, however, that Defendant must

1 provide a copy of this Decree to the new owner or transferee and provide
2 written notice to Plaintiffs of the sale or other transfer of real interest
3 within 30 days of closing. The terms of this Decree run with the property
4 for any Dairy Operations until satisfied.

5 7. This Decree shall not constitute evidence in any proceeding,
6 an admission or adjudication with respect to any allegation contained in the
7 90-day Notice or the Complaint, any fact or conclusion of law with respect
8 to any matter alleged in or arising out of the 90-day Notice or the
9 Complaint, or the admission or evidence of any wrongdoing, liability or
10 misconduct on the part of the Defendant, or any of their directors, officers,
11 employees or any affiliated entities or persons. This Decree shall not be
12 admitted in any proceeding against a Party over that Party's objections,
13 except for purposes of interpreting, modifying, and/or enforcing this
14 Decree.

15 8. Any paragraph or subparagraph heading or section title in this
16 Decree is provided solely as a matter of convenience to the reader and shall
17 not be construed to alter the meaning of any provision of this Decree.

18 **B. Manure Storage Lagoons and Emergency Overflow Basins**

19 9. Defendant may increase the depth of its eight (8) lagoons in
20 order to increase storage volumes and support split winter manure
21 application, based on the Engineering Water Balance (attached as Exhibit
22 13), in order to document the sufficiency of on-Dairy storage under
23 operating conditions contemplated in this Decree.

24 10. Defendant shall double line all eight (8) of its lagoons using
25 two membrane liners with a leak detection sump and pump to remove
26

1 leachate collecting between them, as set forth in the Lagoon and Basin
2 Basis of Design Report attached hereto as Exhibit 3.

3 11. Defendant shall complete design and submit permit
4 applications to the relevant authorities for all lagoon lining activities
5 required in Paragraph 10 no later than December 31, 2020. Plaintiffs shall
6 not submit any adverse public comments on Defendant's State
7 Environmental Policy Act submittals related to the lagoon lining.

8 12. No later than December 31, 2021, Defendant shall complete
9 the lining of the first of its eight (8) lagoons. During each subsequent
10 calendar year from 2022 through 2028, Defendant shall complete the lining
11 of at least one additional lagoon (i.e., one lagoon in calendar year 2022,
12 one lagoon in calendar year 2023, etc.). Although Defendant shall be
13 permitted to expedite the lining contemplated in this section, lining of all
14 eight lagoons shall be completed no later than December 31, 2027.

15 13. Defendant may abandon in place any lagoon that it chooses
16 not to line, in the event such lagoon is not needed for storage capacity.
17 Such abandonment shall include the removal or treatment of the abandoned
18 lagoon bottom and side-wall soils containing greater than 45 mg N/kg
19 (measured as the sum of ammonium-N and nitrate-N), and Defendant shall
20 provide sampling data to Plaintiffs at the time abandonment is completed
21 which documents that the bottom and side-wall soils of any abandoned
22 lagoons contain less than 45 mg N/kg. Any such abandonment(s) shall be
23 performed in accordance with the schedule in Paragraph 12 and any
24 applicable requirements in the Concentrated Animal Feeding Operation
25 permit (the "CAFO Permit") under which Defendant is operating, and any

1 applicable requirements of Defendant's DNMP. In the event that
2 Defendant chooses to abandon a lagoon in a particular calendar year, such
3 abandonment shall be treated as if Defendant met the annual lagoon-lining
4 requirement in Paragraph 12 for that particular calendar year.

5 14. Defendant may combine any lagoons to decrease overall
6 storage costs. In the event that Defendant chooses to combine two or more
7 lagoons in a particular calendar year, such combination shall be treated as
8 if Defendant lined one lagoon for that calendar year and one lagoon for the
9 next calendar year, such that no lagoon lining shall be required in the
10 calendar year subsequent to the combination (e.g., if two lagoons are
11 combined in calendar year 2022, Defendant shall not be required pursuant
12 to Paragraph 12 to line a lagoon in calendar year 2023).

13 15. Defendant shall line the basin currently being used as an
14 emergency overflow basin on the Lower Dairy (as detailed on the map
15 included in Exhibit 1) with a single 60-mil HDPE liner, provided the basin
16 is used for storage of manure or stormwater contacting the Production Area
17 ("Process Wastewater") for more than 7 days in a row or 30 days
18 cumulative during a single calendar year. If the basin is to be used for
19 anything other than the limited Process Wastewater, as defined in the
20 preceding sentence, then Defendant shall double-line the basin in the same
21 manner required of the lagoons, as described in Exhibit 3. If the basin
22 needs to be lined in this manner, lining will be completed prior to the
23 earlier of either (a) December 31, 2028 or (b) no later than one year after
24 Defendant's use of the basin for something other than storage of Process
25 Wastewater as defined herein.

1 16. No later than December 31, 2020, Defendant shall install an
2 additional emergency earthen overflow basin adjacent to and southwest of
3 the existing concrete collection sump at the Upper Dairy to provide
4 contingent short-term (i.e., less than 7 days at a time and less than 30 days
5 per year) stormwater and manure containment in the event of a power
6 failure or other unforeseen system upset at the Upper Dairy. The new basin
7 shall be lined with a single 60-mil HDPE liner if the basin is used for
8 storage of manure or Process Wastewater for more than seven (7) days in a
9 row or thirty (30) days cumulative during a single calendar year. After
10 installation, if this basin is used for something other than storage of manure
11 or process wastewater, then it shall be double-lined as required of the
12 lagoons, as described in Exhibit 3. If the basin needs to be lined in this
13 manner, lining will be completed prior to the earlier of either (a) December
14 31, 2028 or (b) no later than one year after Defendant's use of the basin for
15 something other than storage of manure or process wastewater.

16 17. Defendant shall provide Plaintiffs, in accordance with the
17 Notice provisions in Paragraph 96 with an estimated schedule of its
18 planned activities pursuant to Exhibit 3 prior to such activities being
19 conducted. The intent of that schedule notification is to facilitate
20 construction observation by Plaintiffs. Recognizing that daily schedules
21 may change due to contractor availability, weather conditions or other
22 factors, Defendant shall use best efforts to keep Plaintiffs informed of
23 schedule changes.

24 18. Plaintiffs shall be permitted to observe and inspect
25 Defendant's activities with respect to Paragraph 10 (observation of lining
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1 of lagoons); Paragraph 16 (observation of new emergency overflow basin);
2 and Exhibit 3, in accordance with Section L below (Site Inspections).

3 19. Defendant shall provide Plaintiffs, in accordance with the
4 Notice provisions in Paragraph 96 with an as-built report following the
5 lining or abandonment of each lagoon pursuant to this Section. Defendant
6 shall provide the as-built report to Plaintiffs no later than 60 days after
7 Defendant completes construction of such lining or abandonment of such
8 lagoon. For lagoons that are lined, the as-built report will include the
9 following information:

10 a. Survey of lagoon topography at the completion of soil
11 work (excavation, fill, grading and compaction) prior to liner installation;

12 b. Results of compaction test data including lagoon floor,
13 slope, and sump;

14 c. Final liner leak detection survey with all liner QA/QC
15 data (i.e., results of puddle survey prior to filling of lagoon);

16 d. As-built drawings with vent locations, sump details,
17 sump shape and volume, and utility locations;

18 e. Leak detection pump test data; and

19 f. Reasonably detailed photographic documentation of each
20 lagoon at six project milestones: beginning of construction; completion of
21 earthwork; placement of secondary liner; installation of sump and piping;
22 placement of primary liner; and project completion.

23 20. No later than January 31 of each year beginning in 2021,
24 Defendant shall provide Plaintiffs, in accordance with the Notice
25 provisions in Paragraph 96, an annual written summary, prepared under the

1 direction of a licensed engineer, of all work completed under this Section
2 B.

3 **C. Groundwater Well Installation and Monitoring**

4 21. In addition to its existing four (4) monitoring wells at the
5 Dairy, Defendant shall install seven (7) new groundwater monitoring wells
6 in the locations specified in the Monitoring Well Installation and
7 Groundwater Monitoring Plan attached hereto as Exhibit 4.

8 22. The seven (7) wells shall be installed with screens across the
9 first water-bearing zone.

10 23. The seven (7) wells shall be developed, surveyed, and gauged
11 no later than December 1, 2020, and during each monitoring event.
12 Defendant shall provide Plaintiffs no later than December 31, 2020 with
13 gauging data showing measured groundwater elevations and estimated
14 gradients.

15 24. If the gauging data shows gradients are southeasterly rather
16 than south/southwesterly at any time during the monitoring period,
17 meaning that groundwater from the Production Area or the Application
18 Fields may not be intercepted by the newly installed monitoring wells, then
19 Defendant shall install up to two (2) additional wells ("Contingent Wells")
20 in the approximate locations shown in the Groundwater Monitoring Plan
21 (Exhibit 4).

22 25. In the event that Defendant installs Contingent Wells, they
23 shall be installed, developed, surveyed and gauged no later than the next
24 quarterly sampling period following determination of their need. This
25 schedule assumes that applicable County permits can be obtained in a
26

1 timely manner for the southeasterly Contingent Well, which will be located
2 on the right-of-way for Independence Road; if such permits are not granted
3 in a timely manner, the Parties agree that this deadline shall be extended
4 appropriately.

5 26. Plaintiffs shall be permitted to observe installation of all
6 monitoring wells under this Section, in accordance with Section L below
7 (Site Inspections).

8 27. Beginning after installation of the new wells, Defendant shall
9 conduct four quarterly sampling events of all of its monitoring wells (in
10 March, June, September, and December of 2021). Such quarterly sampling
11 shall test for nutrients, conventional parameters, cations and anions as
12 described in the Monitoring Well Installation and Groundwater Monitoring
13 Plan (Exhibit 4).

14 28. As described in Exhibit 4, following the four quarterly
15 sampling events in 2021, Defendant shall conduct semi-annual (i.e., twice
16 per year) sampling events (in June and December) from 2022 through, at
17 least, 2028.

18 29. Semi-annual sampling shall test for the following two
19 parameters: nitrate and phosphorus. However, if other nutrients exceed
20 the following trigger values during any of the previous sampling events,
21 then the additional sampling described below shall be conducted:

22 a. If ammonia-nitrogen or nitrite-nitrogen is detected
23 above the method reporting limit in a well, the well(s) in which it was
24 detected above the reporting limit shall be sampled for the detected
25 parameter(s) for the next four sampling events.

1 b. If average phosphorus values from the prior four
2 sampling events exceed 0.06 mg/L or if individual phosphorus values
3 exceed 0.1 mg/L in a well, the well(s) in which it was detected above
4 reporting limit shall be sampled for phosphorus for the next four sampling
5 events. The trigger values for phosphorus do not apply to a well(s)
6 screened across a layer of volcanic ash or other phosphorus-rich soil,
7 provided that the presence of such ash or soil is documented to Plaintiffs at
8 the time of well installation.

9 30. Defendant's obligations to monitor its newly installed wells
10 for nitrate pursuant to Paragraph 29(a) shall conclude after the monitoring
11 event in the fourth quarter of 2028, except in the event that the maximum
12 contaminant level for nitrate of 10 mg NO₃-N/L ("Nitrate MCL") is
13 exceeded during the four prior sampling events, in which case Defendant
14 shall continue to conduct twice-per-year nitrate monitoring in any well that
15 so exceeded the Nitrate MCL. Defendant shall terminate any such
16 additional nitrate monitoring in any well that required the additional nitrate
17 monitoring following two years (i.e., four sampling events) of consecutive
18 semi-annual measurements below the Nitrate MCL.

19 31. Defendant's obligations to monitor its newly installed wells
20 for phosphorus pursuant to Paragraph 29(b) shall conclude after the fourth
21 quarter of 2028, except in the event that the trigger levels listed in
22 Paragraph 29(b) are exceeded during the four prior sampling events, in
23 which case Defendant shall conduct twice-per-year phosphorus monitoring
24 in any well that so exceeded the trigger levels. Defendant shall terminate
25 any such additional phosphorus monitoring in any well that required the

1 additional phosphorus monitoring following two years (i.e., four sampling
2 events) of consecutive semi-annual measurements below the trigger levels.

3 32. Within 60 days after Defendant collects samples from
4 monitoring wells pursuant to this Section C, Defendant shall provide
5 Plaintiffs pursuant the Notice provisions in Paragraph 96 below with a
6 transmittal letter and copy of the deliverables that Defendant receives from
7 the laboratory concerning those samples. The transmittal letter shall
8 include a map of measured groundwater elevations and a map of nitrate
9 results, and a full data table (of all sampled parameters for current and prior
10 sampling events conducted pursuant to this Section). Each transmittal
11 letter shall also be accompanied with an electronic data table in .xls or .xlsx
12 format.

13 33. The transmittal letter accompanying the copy of laboratory
14 deliverables that Defendant obtains after the fourth quarter of sampling in
15 2021 described above in Paragraph 27 shall summarize and compare the
16 ammonia, nitrite, and phosphorus results from that fourth quarter sampling
17 event and the previous three quarters of results to the trigger values for
18 ammonia-nitrogen, nitrite-nitrogen, and phosphorus listed in Paragraph
19 29(a)-(b).

20 **D. Stormwater Engineering**

21 34. Attached hereto as Exhibit 5 is Defendant's Stormwater
22 Engineering Plan.

23 35. Defendant shall complete the installation of improvements
24 identified in Exhibit 5 no later than December 31, 2021.

25 36. Plaintiffs shall be permitted to observe replacement of the
26

1 earthen catch basin at the Little Dairy with a concrete vault or lined catch
2 basin, in accordance with Section L below (Site Inspections).

3 **E. Cow Pen Maintenance**

4 37. Attached as Exhibit 6 is Defendant's Cow Pen Maintenance
5 Plan.

6 38. Defendant shall apply the maintenance standards in Exhibit 6
7 to the cow pens currently in place at the Dairy, and to any pens that
8 Defendant adds to the Dairy in the future.

9 39. Defendant shall not be required to quantify or weigh the
10 specific quantities of manure it removes from the cow pens, provided that
11 the manure is moved appropriately to the compost areas in accordance with
12 Exhibit 6.

13 **F. Silage Areas**

14 40. Defendant shall collect and route to a lined manure storage
15 lagoon all stormwater and silage liquids collected from the silage area
16 shown on Exhibit 7 (Silage Area Drainage Improvements).

17 41. Defendant is permitted to continue using compacted and
18 graded soil or asphalt surfaces at the Dairy for silage storage. No
19 additional areas shall be used at the Dairy for silage storage unless the
20 underlying soils are compacted to 95% compaction, slopes are a minimum
21 of 2 percent and drainage for stormwater and collected leachate is
22 provided, with that drainage discharged directly to the lagoon system.

23 a. Prior to September 30, 2022, Defendant shall install
24 lined collection ditches or strip drains at approximately the locations
25 depicted in Exhibit 7 in order to collect stormwater and other liquids
26

1 generated in the silage areas.

2 b. If Defendant installs collection ditches instead of drain
3 piping, such ditches will be lined with a low-permeability material such as
4 HDPE liner, concrete, or asphalt.

5 c. Defendant shall convey the liquids collected in the
6 installed collection ditches or strip drains to lined sumps or catch basins via
7 lined ditches or piped conveyances directly to manure storage lagoons.

8 42. Once Defendant completes the activities Paragraphs 40-41,
9 Defendant shall submit to Plaintiffs in accordance with the Notice
10 provisions in Paragraph 96 a written description prepared by a licensed
11 engineer of the activities Defendant undertook pursuant to Paragraphs 40-
12 41.

13 43. After Plaintiffs' receipt of the written descriptions required by
14 Paragraph 42, Plaintiffs shall be permitted to inspect Defendant's activities
15 with respect to the silage improvements, in accordance with Section L (Site
16 Inspections).

17 **G. Compost Areas**

18 44. No later than September 30, 2021, Defendant shall perform
19 soil proctor and compaction testing throughout its two compost areas
20 shown on the Compost Operations Plan attached as Exhibit 9.

21 45. Defendant is permitted to continue using compacted and
22 graded soil surfaces at the Dairy for compost operations and storage. Prior
23 to September 30, 2022, Defendant shall install lined collection ditches or
24 strip drains at approximately the locations depicted in Exhibit 8A (Upper
25 Compost Area Improvements) and Exhibit 8B Lower Compost Area

1 Improvements) in order to collect stormwater and other liquids generated in
2 the compost areas.

3 46. Compaction testing shall be performed on a grid (four (4)
4 locations per acre). Areas not meeting 95% compaction shall be re-
5 compacted and retested.

6 47. Re-compaction, if required, of the two compost areas shall be
7 completed no later than September 30, 2023.

8 48. Defendant shall maintain a minimum 2% grade in the compost
9 areas toward the drainage swales.

10 49. Once completed, Defendant shall submit to Plaintiffs in
11 accordance with the Notice provisions in Paragraph 96 a written
12 description prepared by a licensed engineer of the activities Defendant
13 undertook pursuant to Exhibits 8A, 8B, and 9.

14 50. After Plaintiffs' receipt of the written descriptions required by
15 Paragraph 49, Plaintiffs shall be permitted to inspect Defendant's activities
16 with respect to recompaction, in accordance with Section L (Site
17 Inspections).

18 51. Defendant shall adhere, at a minimum, to the composting
19 procedures as further described in the Compost Operations Plan attached as
20 Exhibit 9.

21 **H. Wet Manure Storage Area**

22 52. Defendant shall minimize potential water generation within the
23 compost areas associated with initial placement of wet separator solids.

24 53. Defendant has already purchased mechanical dewatering
25 equipment to remove free-draining water from separator solids. Defendant
26

1 has already applied for relevant permits to install such equipment at the
2 Dairy. Defendant shall install and operate such equipment by August 15,
3 2020, or as soon as practicable thereafter subject to permit issuance from
4 Yakima County. Once the equipment is operational, Defendant shall store
5 the wastewater that it removes from separator solids as a result of operating
6 this equipment in the Dairy's lagoons.

7 **I. Manure Application and Field Management**

8 54. The provisions of this Section shall apply only to Application
9 Fields owned, leased, or otherwise controlled by Defendant, including any
10 Application Fields Defendant owns, leases, or otherwise controls after the
11 Effective Date and during the term of this Decree. All such Application
12 Fields owned, leased, or otherwise controlled by Defendant shall be
13 addressed in Defendant's DNMP.

14 55. For purposes of this Decree, Defendant shall be deemed to
15 "control" an Application Field to which manure is applied when (a) the
16 manure is applied by Defendant's employees or Defendant's contractors
17 using Defendant's or Defendant's contractor's trucks or application
18 equipment; (b) when the amounts/rates of application are not dictated by
19 the recipient; and (c) when Defendant is not meaningfully compensated for
20 such manure. For purposes of this subparagraph, reimbursement for fuel
21 costs is not considered meaningful compensation.

22 56. With respect to nitrogen, Defendant shall adhere to the
23 following beginning in the Fall of 2021:

24 a. Defendant shall make nitrogen applications at or below
25 agronomic rates based on Application Field-specific nutrient management
26

1 budgets prepared by an agronomist.

2 b. No later than January 31, 2025, Defendant shall have its
3 agronomist conduct a retroactive review of its agronomic rate calculations
4 and field nutrient performance data for crop years 2021-2024 and
5 document that review in a report (“Agronomic Rate Report”). This review
6 shall assess whether taken as a whole the agronomic rate calculations have
7 adequately projected nutrient utilization within the bounds of good
8 agronomic practice with the parallel goal of minimizing leaching potential
9 to groundwater.

10 c. Defendant’s agronomist’s review of nutrient utilization
11 shall include the mineralization of residual soil nitrogen, the availability of
12 nitrogen from applied manure, the extraction of nitrogen by crops and the
13 status and trends of residual nitrogen in the Application Fields.

14 d. In the event that Defendant’s management of manure in
15 crop years 2021-2024 has followed its agronomist’s recommendations
16 based on agronomic rate calculations, evidence requiring adjustments to the
17 agronomic rate calculations shall include excessive amounts of residual soil
18 nitrogen (greater than 15 ppm) occurring consistently in some application
19 fields or failure to reach 15 ppm in twenty-five percent (25%) or more of
20 Defendant’s Application Fields.

21 e. Defendant shall submit to Plaintiffs in accordance with
22 the Notice provisions in Paragraph 96 a draft of the Agronomic Rate
23 Report for Plaintiffs’ review and comment no later than January 31, 2025.
24 Defendant shall consider any comments Plaintiffs submit to Defendant on
25 the draft Agronomic Rate Report if Plaintiffs deliver such comments to
26

Defendants in accordance with the Notice provisions in Paragraph 96 below no later than 45 calendar days after Defendant provides Plaintiffs with the draft Agronomic Rate Report. Defendant shall finalize the Agronomic Rate Report no later than April 15, 2025, and send a copy to Plaintiffs upon completion in accordance with the notice provisions in Section U. If the conclusions of the finalized Agronomic Rate Report indicate a need to adjust the agronomic rate calculation assumptions, such conclusions shall be implemented by Defendant beginning with crop year 2025 summer crop and through the termination of this Decree.

f. Defendant shall restrict its manure application in the manner described in the following Table 1:

Table 1. Manure Application Restrictions for Nitrogen Control

Fall Average Residual N in Upper 2 feet (NH ₄ -N+NO ₃ -N)	Nitrogen Application Restrictions Based on Measured Fall Average Residual Soil Nitrogen Levels (NH ₄ -N+NO ₃ -N)				Split Application Schedule for Manure Applied by Irrigation (Crop Year 2025+ Only)	
	Crop Year 2022 (Fall 2021)	Crop Year 2023 (Fall 2022)	Crop Year 2024 (Fall 2023)	Crop Year 2025+ (Fall 2024)	Portion of winter crop application made in fall (Oct-T200)	Portion of winter crop application made in spring (After T200)
≤ 15 mg N/kg	100% of agronomic rate	100% of agronomic rate	100% of agronomic rate	100% of agronomic rate	≤ 100%	Balance
15.1-25 mg N/kg	100% of agronomic rate	100% of agronomic rate	95% of agronomic rate	90% of agronomic rate	≤ 66%	Balance
25.1-35 mg N/kg	95% of agronomic rate	85% of agronomic rate	80% of agronomic rate	75% of agronomic rate	≤ 33%	Balance
35.1-45 mg N/kg	90% of agronomic rate	80% of agronomic rate	70% of agronomic rate	60% of agronomic rate	0%	Balance
> 45 mg N/kg	No application	No application	No application	No application	—	—

1 g. For purposes of interpreting Table 1:

2 i. Nitrogen agronomic rate limitation shall apply to
3 both the winter and summer crop, unless follow-up soil nitrogen
4 measurements fall into a lower category, or crop tissue (basal stem and leaf
5 sampling) measurements show a deficiency in the crop tissue for nitrogen.

6 ii. For crop year 2025 and thereafter, winter manure
7 applications will be split into a fall and early spring application as indicated
8 in Table 1 for fields to which manure is applied by irrigation.

9 iii. If a given Application Field exceeds 25 mg N/kg
10 for three (3) years in a row after crop year 2025, then Defendant shall
11 reduce the application limit for that field from 75% to 50% until the
12 nitrogen level drops below 15 mg N/kg.

13 iv. If a given Application Field exceeds 35 mg N/kg
14 for two (2) years in a row after crop year 2025, then Defendant shall apply
15 no manure to that field until the nitrogen level drops below 15 mg N/kg.

16 h. Nitrogen levels used to determine compliance with
17 Table 1 shall be measured by the average of nitrate-nitrogen plus
18 ammonium-nitrogen in each of the top two feet of the soil column based on
19 Fall post-harvest sampling results.

20 i. Agronomic rate adjustments shown in Table 1 shall be
21 applied after completing the standard agronomic rate calculation. For
22 example, if a standard agronomic rate calculation indicates a need for 2.0
23 million gallons of manure, and if the restricted rate in Table 1 is “90
24 percent of agronomic rate”, then the maximum manure application for that
25 Application Field will be 1.8 million gallons (2.0 million gallons x 90% =

1 1.8 million gallons).

2 j. For the Application Fields to which Defendant applies
3 manure via irrigation or blending, Defendant shall split the winter manure
4 application into a fall and early spring application. The amount of the split
5 shall be adjusted based on Fall residual soil nitrogen level as indicated in
6 Table 1 for crop year 2025 and beyond. Split winter applications are not
7 required for Defendant's Application Fields which Defendant uses for
8 injection.

9 57. With respect to phosphorus, Defendant shall adhere to the
10 following beginning on the Effective Date:

11 a. Defendant shall measure available phosphorus at the 0-
12 1-foot and 1-2-foot levels in its Application Fields in parallel with fall soil
13 nitrogen testing.

14 b. Defendant shall maintain its Application Fields in the
15 low-risk category as measured using the current NRCS approved
16 phosphorus index procedures.

17 c. Defendant shall maintain phosphorus levels in its feed
18 ration at a level less than 0.4% phosphorus measured on a total ration dry
19 matter basis.

20 d. Sunnyside shall continue physical manure solids
21 separation using a manure centrifuge or other equivalent methods for
22 enhanced solids recovery, as well as composting and exports to reduce on-
23 Dairy applications of manure and wastewater.

24 58. With respect to phosphorus, in addition to the requirements in
25 Paragraph 57, and beginning in the crop season that commences after
26

Defendant's Fall 2026 post-harvest sampling, Defendant shall restrict its manure application in the manner described in the following Table 2:

Table 2. Manure Application Restrictions for Phosphorus Control

Fall Average Available P in Upper 2 feet (mg Olsen P/kg)	Total annual application based on P (Crop Year 2027+)
< 40 mg P/kg	Control for N
41-100 mg P/kg	90% of crop extraction
101-180 mg P/kg	80% of crop extraction
181-300 mg P/kg	25% of crop extraction
> 300 mg P/kg	No application

a. Defendant shall apply the requirements in Table 2 to each of its Application Fields based on the average fall post-harvest measurements of available phosphorus measured in the top 2 feet of the soil column in each Application Field.

b. Defendant shall adhere to the requirements in Table 2 during the crop year following the Fall compliance measurements or until resampling has shown that the requirements in Table 2 are no longer required (e.g., an Application Field measuring 45 ppm P in fall is retested in spring and measures 38 ppm P).

c. Based on the Fall available phosphorus measurements, the requirements in Table 2 shall be implemented and followed for the duration of the Consent Decree.

d. For purposes of Table 2, phosphorus extraction rate limitation shall apply to the full crop year, unless follow-up soil available phosphorus measurements fall into a lower category.

e. The annual limits on phosphorus application listed in Table 2 are expressed as a function of the estimated annual phosphorus

1 extraction rate of the crops (extraction rate = tons crop/acre x P content/ton
2 crop) grown on each field during the crop year. The annual application
3 amount will be based on the fall available P levels and will be split in most
4 cases into multiple applications, with the total annual amount applied
5 limited to the Table 2 values.

6 59. Defendant shall implement a soil moisture monitoring
7 program at the Application Fields in accordance with the following
8 requirements:

9 a. For purposes of this paragraph, a “Soil Moisture
10 Monitoring Period” begins two weeks prior to Defendant’s first irrigation
11 or manure application event in each Application Field through at least two
12 weeks after Defendant’s final irrigation or manure application event in each
13 field. During most years, the Soil Moisture Monitoring Period will extend
14 from mid-March through early November.

15 b. During the Soil Moisture Monitoring Periods in 2021,
16 2022 and 2023 (the “Three Year Test Period”), Defendant shall install and
17 operate a set of irrigation sensors to monitor soil moisture levels in eight
18 (8) representative Application Fields as illustrated in Exhibits 2a-c. For
19 Application Fields that contain soils with significantly different nitrate
20 leaching potential or water holding capacity, as indicated by the Natural
21 Resources Conservation Service (“NRCS”), Defendant shall deploy and
22 operate soil moisture sensors in each of two representative soil series. The
23 locations of the soil moisture sensors are shown on the maps attached
24 hereto as Exhibit 10.

25 c. Defendant shall install sensors in each location at the
26

1 following three approximate depths (variable by +/- two inches): 0.5-foot,
2 1.5-feet and 2.5-feet. If rocky or indurated soil properties in any location
3 preclude effective placement of the 2.5-foot sensor after three independent
4 boring attempts, Defendant shall not be required to install the 2.5-foot
5 sensor in that location(s), but shall document for each of those location(s)
6 the total depth of soil to the point of boring refusal.

7 d. To verify field capacity estimates, Defendant shall
8 calibrate sensors at the time of installation using a gravimetric sample
9 approach where soil water is measured on a weight basis. Soil bulk density
10 measurements used in calibration shall be confirmed for each sensor
11 location at each depth. Calibration shall be reported in the first Annual
12 Report (described in Paragraph 59(h) below) along with Application Field
13 capacity estimates for each monitoring location at each depth.

14 e. Defendant shall calibrate any replacement sensors in a
15 similar manner as in Paragraph 59(d), and these calibrations shall be
16 reported in the Annual Report (described in Paragraph 59(h) below) for the
17 year in which the sensors were replaced. Defendant shall have at least two
18 (2) replacement sensors available at the Dairy in case of failure of installed
19 sensors.

20 f. Defendant shall use best efforts to maintain the sensors
21 in an operational condition throughout the Soil Moisture Monitoring
22 Period. Defendant shall implement necessary maintenance, repairs or
23 replacement of the sensors with the goal of minimizing operational down-
24 times to twenty-one (21) days for the two shallowest depths and fifteen
25 (15) days for the sensors at 2.5 feet.

1 g. During the Three Year Test Period, Defendant shall use
2 the soil moisture sensors to validate and, if necessary, adjust its irrigation
3 rates to meet crop needs while minimizing exceedances of Application
4 Field capacity in the 2.5-foot soil level as follows:

5 i. Defendant shall continue its practice of obtaining
6 weekly irrigation needs estimates from an agronomist using the
7 Evapotranspiration method.

8 ii. Defendant shall irrigate its Application Fields
9 consistent with the recommended values unless soil moisture sensors
10 indicate an exceedance of field capacity at the 2.5-foot level.

11 iii. If soil sensors from the prior week indicate
12 exceedances of Application Field capacity at the 2.5-foot level, Defendant
13 shall adjust the recommendation for future irrigation rates downward from
14 what would otherwise be provided using the Evapotranspiration method,
15 with the goal of decreasing and maintaining soil moisture levels below
16 field capacity at the 2.5 feet level. Defendant shall track both the original
17 and any adjusted recommendations on a weekly basis throughout the Three
18 Year Test Period.

19 iv. For the first two fields with an irrigation-related
20 exceedance of Application Field capacity at the 2.5 feet level during the
21 Three Year Test Period, Defendant's Fall soil monitoring shall include a
22 one-time sampling on each such Application Field that shall extend to the
23 5-feet depth in that Application Field (or to the depth of refusal). For each
24 sample, Defendant shall analyze at 3 feet, 4 feet, and 5 feet for ammonia-N
25 and nitrate-N and Olsen P. The resulting sampling data shall be provided
26

1 to Plaintiffs consistent with the Notice provisions in Paragraph 96.

2 h. No later than February 28 in the year after the end of
3 each Soil Moisture Monitoring Period during the Three Year Test Period
4 (i.e., for the 2021 Soil Moisture Monitoring Period, this date would fall on
5 February 28, 2022), Defendant shall provide Plaintiffs pursuant to the
6 Notice provisions in Paragraph 96 with an Annual Report containing
7 Defendant's initial and adjusted weekly recommendations and the
8 monitoring data for each soil moisture sensor in tabular format. Monitoring
9 data provided for each sensor location shall consist of a complete digital
10 file (.xlsx, .xls, or .csv) and a graphical readout showing measured moisture
11 levels for the 0.5-foot, 1.5-feet and 2.5-feet sensors throughout each Soil
12 Moisture Monitoring Period, with notes summarizing any encountered
13 sensor performance issues, any completed repairs, and notes documenting
14 the dates, amounts, and rates (gallons/acre) of irrigation water and manure
15 applications in the Application Field where the sensor is located.
16 Defendant shall also provide in the Annual Report local daily precipitation
17 data for the year using publicly-available weather data from the nearest
18 reliable weather station.

19 i. If during the 2023 Soil Moisture Monitoring Period the
20 moisture sensor readings show a pattern of ongoing irrigation-related
21 exceedances of field capacity at the 2.5-feet depth (i.e., three or more
22 exceedances, not counting exceedances immediately following
23 precipitation events), then Defendant shall maintain moisture sensors in the
24 Application Field where such sensor exceedances were reported until no
25 more than one (1) exceedance is recorded in that field during the Soil
26

1 Moisture Monitoring Period.

2 60. Beginning on the Effective Date, Defendant shall for the
3 duration of this Decree maintain application records of (a) any manure it
4 hauls to and applies to an Application Field; and (b) any manure it applies
5 to Application Fields through irrigation or blending. Such records shall
6 include the Application Field ID; the manure quantity (volume);
7 characteristics (blended or straight); date of application; and a link to the
8 manure nutrient testing information. Defendant shall keep separate
9 application records in the event it conducts multiple applications on
10 different days.

11 61. No later than January 31 of each year beginning in 2021 and
12 for each year for the duration of the Consent Decree, Defendant shall
13 provide to Plaintiffs PDF copies of manure management records for the
14 prior crop year via electronic mail (at the addresses listed in Paragraph 96).
15 Records that Defendant shall provide pursuant to this paragraph are listed
16 in Exhibit 11.

17 62. Any manure management records routinely generated by
18 Defendant in compliance with its CAFO permit and similar regulatory
19 requirements shall be kept on-site at the Dairy for five (5) years from the
20 date of generation. No more than once per calendar year, Plaintiffs shall
21 have the right to request access to conduct an on-site review of the manure
22 management records (pursuant to Section L) for which they have not been
23 provided copies pursuant to Paragraph 61.

24 63. Defendant shall use flow meters on all Application Fields to
25 which it applies lagoon water through irrigation or blending.

1 **J. Underground Conveyance Inspections**

2 64. No later than December 31, 2023, Defendant shall inspect the
3 wastewater and manure lines between the production areas, the lagoons,
4 and the pivots (to the extent they are used for liquid manure transportation)
5 at the Upper, Lower and Little Dairies. If the inspection shows that repairs
6 need to be made in any of those lines, Defendant shall make the necessary
7 repairs no later than December 31, 2023.

8 65. Inspection and any required repair work shall be performed by
9 an experienced and qualified contractor.

10 66. Once inspection and any required repairs are completed,
11 Defendant shall submit to Plaintiffs in accordance with the Notice
12 provisions in Paragraph 96 a written description of the activities Defendant
13 undertook pursuant to this Section, which shall include documentation of
14 the lines inspected and the location(s) of any repair(s) made.

15 **K. Clean Drinking Water Project Funding**

16 67. The following funding mechanisms for the Clean Drinking
17 Water Project (“CDWP”) have been determined by the Parties based on
18 Defendant’s proactive stance with respect to its manure management
19 practices and cooperative negotiations with Plaintiffs.

20 68. In the years 2020 through and including 2024, Defendant shall
21 make five annual \$24,000 payments (for a total of \$120,000) to the CDWP.
22 Payments shall be made prior to December 31 of each year. The first
23 payment shall be made no later than December 31, 2020 and the final
24 payment shall be made no later than December 31, 2024.

25 69. Between 2025 and 2028, Defendant shall make five annual
26

1 payments to the CDWP of up to \$24,000 per year based on the number of
2 new on-site, downgradient groundwater monitoring wells exceeding the
3 Nitrate MCL. The amount of each annual payment between 2025 and 2028
4 shall be equal to the percentage (rounded to the nearest full percent) of the
5 new groundwater wells that exceed the nitrate MCL in the prior monitoring
6 year (e.g., if 3 of 7 groundwater wells exceeded the Nitrate MCL during
7 2024, the annual payment for 2025 would be \$10,320 [3/7, or 43%
8 multiplied by \$24,000]). Payments shall be made prior to December 31 of
9 each year between 2025 and 2028.

10 70. No later than March 31, 2029, Defendant shall make a final
11 one-time payment to the CDWP equal to 3-times the payment it made in
12 2028 pursuant to Paragraph 69.

13 71. All aspects of the Clean Drinking Water Project shall be
14 managed by the CDWP. Defendant's sole obligation with respect to this
15 Section or the Clean Drinking Water Project is to provide the funding
16 described in this Section.

17 72. For each year in which Defendant makes a payment pursuant
18 to Section K, Plaintiffs shall submit to Defendant in accordance with the
19 Notice provisions in Paragraph 96 a written description of the activities the
20 CDWP undertook pursuant to Section K. The written description shall be
21 provided annually by Plaintiffs no later than March 31 of the year
22 following each annual payment (i.e., by March 31, 2021 for the payment
23 made in 2020). The written description shall include but is not limited to:

24 a. Results of drinking water nitrate testing performed
25 during that year by Plaintiffs at households within the radius illustrated on
26

1 Exhibit 12 (i.e., three miles downgradient of the Dairy).

2 b. Addresses of households within the radius illustrated on
3 Exhibit 12 that were provided with installation or maintenance of clean
4 drinking water systems (e.g., reverse osmosis systems) or bottled water by
5 the Clean Drinking Water Project during the year. If any household(s)
6 choose to keep confidential that they were provided with installation or
7 maintenance of a clean drinking water system, then the written description
8 shall include how many of these households have so chosen, along with the
9 addresses and results from the other households.

10 **L. Site Inspections**

11 73. Pursuant to the above Section B (Manure Storage Lagoons and
12 Overflow Basins), Section C (Groundwater Well Installation and
13 Monitoring), Section D (Stormwater, Piping, and Engineering Plan),
14 Section F (Silage Area), Section G (Compost Area), and Section I (Manure
15 Application and Management) relating to Plaintiffs' observation and/or
16 inspection of activities at the Dairy, the following provisions shall apply:

17 74. For each activity Plaintiffs are permitted to observe and/or
18 inspect, Plaintiffs may have up to three representatives present at the Dairy
19 during such observation or inspection.

20 75. Plaintiffs' representatives are permitted upon the Dairy solely
21 to observe and inspect the activities provided.

22 76. Plaintiffs' representatives shall have applicable scientific or
23 professional qualifications to be able to confirm compliance with this
24 Decree.

25 77. At least 48 hours prior to any such observation and inspection,
26

1 Plaintiffs shall provide Defendant written notice of their intent to observe
 2 and inspect the Dairy, identifying the Section of this Decree on which they
 3 are relying to accomplish such observation or inspection. Such notice shall
 4 include the names of the proposed observers/inspectors, a description of
 5 their qualifications, and the start and end times of the proposed period of
 6 observation/inspection (which shall not be before 8:00 AM or after 5:00
 7 PM, respectively).

8 78. The representatives may not remain on the Dairy outside of
 9 business hours and must be accompanied by a representative of Defendant
 10 at all times (including travel onto and off the Dairy).

11 **M. Fees and Costs**

12 79. Plaintiffs claim the right to recover reasonable attorneys and
 13 expert witness fees under RCRA. Without admitting any facts, law, or
 14 status as prevailing party, after determining the hours expended in
 15 preparation and prosecution of this litigation and the anticipated costs of
 16 the oversight of implementation of this Consent Decree, Defendant and
 17 Plaintiffs agree that the sum of \$103,500, will be paid to the Law Offices of
 18 Charles M. Tebbutt, P.C., 941 Lawrence St., Eugene OR 97401, Attention:
 19 Charles M. Tebbutt, within sixty (60) days of entry of this Decree in full
 20 and complete satisfaction of an award of such costs and fees.

21 80. Defendant shall reimburse Plaintiffs for costs documented by
 22 Plaintiffs that are necessary to monitor implementation of this Decree
 23 (“Monitoring Costs”) up to the following maximum amounts, subject to the
 24 terms in Paragraph 80(a)-(c) below:

- 25 • 2020: \$25,000

- 2021: \$55,000
- 2022: \$50,000
- 2023: \$40,000
- 2024: \$30,000
- 2025-2028: \$25,000 per year

a. The Parties shall use best efforts to minimize Plaintiffs' Monitoring Costs. For instance, the Parties shall maintain open communication with each other in order to minimize the Monitoring Costs; Defendant shall provide required documentation in a timely manner to Plaintiffs; and Plaintiffs shall attempt to bundle activities and associated site visits where possible.

b. No later than February 15 of each year from 2021 through and including 2029, Plaintiffs shall submit a single package of invoices to Defendant that document Plaintiffs' Monitoring Costs for the prior year. The invoices shall provide a brief narrative describing the work Plaintiffs performed and an itemization of associated Monitoring Costs. Defendant shall have 30 calendar days to review invoices and identify any disputed Monitoring Costs for discussion with Plaintiffs. Undisputed Monitoring Costs shall be paid within 60 calendar days of Defendant's receipt of the invoice(s) reflecting the undisputed Monitoring Costs. Disputed Monitoring Costs shall be subject to the Dispute Resolution provisions of Section S.

c. No later than December 1, 2021, the Parties shall evaluate Monitoring Costs incurred by Plaintiffs in 2020 and for the first eleven (11) months of 2021, and shall discuss ways to minimize Monitoring Costs beginning in 2022 based on their experiences to date.

N. Other Terms and Conditions

81. This Consent Decree is intended to be and shall constitute the exclusive remedy and final resolution between Plaintiffs and their members, officers, and directors, and Defendant for all alleged violations of the RCRA and all issues as set forth in the Complaint and/or 90-Day Notice filed in this case that may have occurred or that could have been raised prior to the entry of this Decree.

82. This Decree constitutes a full, final and complete settlement of all claims, rights, demands, and causes of action for alleged violations of RCRA that Plaintiffs asserted, or could have asserted in the Complaint and the 90-Day Notice filed in this case.

83. Neither Plaintiffs, including any person(s) or entity acting with, by or through Plaintiffs, in either their own or in any representative capacity, nor any of Plaintiffs' members, officers or directors, shall file or cause to be filed or intervene in any enforcement lawsuit in any court with respect to matters arising from the allegations set forth in the 90-Day Notice and Complaint in this matter.

84. Each Party acknowledges and represents that they have relied on the legal advice of their attorney, who is the attorney of their own choice and that the terms of this Decree have been completely read and explained to them by their attorney, and that the terms are fully understood and voluntarily accepted. Plaintiffs has been represented by Charles M. Tebbutt of Law Offices of Charles M. Tebbutt, P.C. Defendant has been represented by Meredith Weinberg and Patrick Ryan of Perkins Coie, LLP.

85. Each Plaintiff shall act as a single legal entity with respect to

1 all notices, decisions and other actions taken under this Decree. Defendant
2 shall not be answerable to individual members of each Plaintiff in
3 complying with this Decree. Plaintiffs' counsel shall act as representative
4 for all Plaintiffs with respect to all notices, decisions and other actions
5 taken under this Decree.

6 86. If for any reason the Court should decline to approve this
7 Decree in the form presented, the Parties agree to continue negotiations in
8 good faith in an attempt to cure any objection raised by the court to entry of
9 this Decree.

10 87. Defendant need not file an answer to the complaint in this
11 action unless or until the Court expressly declines to enter this Consent
12 Decree.

13 88. Prior to the date on which the Parties jointly file a motion to
14 enter this Decree, Plaintiffs and Defendant shall have work together to draft
15 a mutually agreeable press release (the "Press Release") announcing certain
16 terms of this Decree. Promptly upon jointly filing a motion to enter this
17 Decree, Plaintiffs and Defendant shall issue the Press Release. Prior to the
18 issuance of the Press Release and subject to the terms of this Decree,
19 neither Plaintiffs nor Defendant shall issue any press release or make any
20 public announcement regarding this Decree or the matters contemplated
21 hereby without the prior written consent of the other Party.

22 **O. Release and Covenant Not to Sue**

23 89. In further consideration of the commitments that Defendant
24 made in this Decree, Plaintiffs release, discharge, covenant not to sue, and
25 agree not assert any claims or causes of action against Defendant or its
26

1 directors, officers, employees and affiliated entities and persons with
 2 respect to all matters arising from the allegations set forth in the Complaint
 3 and 90-Day Notice. This release and covenant not to sue include all claims
 4 or causes of action, whether known or unknown, whether under state or
 5 federal law, and whether asserted or unasserted, and specifically include,
 6 but are not limited to, claims for civil penalties, attorneys' fees and costs,
 7 expert witness fees, injunctive relief, and damages for nuisance, trespass or
 8 other common-law claims arising from the allegations set forth in the
 9 Complaint and 90-Day Notice. This release and covenant not to sue do not
 10 apply to any of Defendant's future acts or omissions arising independently
 11 and separately from the terms of this Decree, and do not release Defendant
 12 from compliance with this Decree.

13 **P. Force Majeure**

14 90. Defendant's obligation to comply with the requirements of
 15 this Decree shall be deferred or modified to the extent caused by *force*
 16 *majeure*. *Force majeure*, for purposes of this Decree, is defined as any
 17 event arising from causes beyond the control of Defendant, that delays or
 18 prevents the performance of any obligation required by this Decree, despite
 19 Defendant's best efforts to comply with this Decree. *Force majeure*
 20 includes, but is not limited to:

21 a. Delays caused by government agencies, including but
 22 not limited to Yakima County and the Department of Ecology, in
 23 reviewing, approving or modifying documents submitted by Defendant.

24 b. Delays caused by third parties that prevent the Dairy
 25 from securing necessary supplies, materials, materials, or products.

1 c. Delays caused by the failure of Plaintiffs or their
2 consultants in fulfilling their obligations under this Decree.

3 d. Delays necessitated by circumstances that pose an
4 imminent threat to public health, safety or the environment.

5 e. The intentional acts or omissions of third parties that
6 cause injury or damage to the Dairy or its operations.

7 f. Government acts, legislation, orders, or regulations
8 affecting Dairy Operations that affirmatively prohibit any agreed-upon
9 action required by this Decree.

10 g. Acts of God, including fire, flood, extreme weather
11 conditions, catastrophic equipment failure, public health emergencies, or
12 other unavoidable casualties.

13 h. Delays necessitated by circumstances relating to the
14 COVID-19 pandemic.

15 91. Delays caused by any *force majeure* acts shall be documented
16 by Defendant and an explanation shall be provided to Plaintiffs'
17 representatives within fourteen (14) business days of the condition giving
18 rise to the act alleged to be *force majeure*, pursuant to the Notice provisions
19 in Paragraph 96 below.

20 **Q. Integration**

21 92. This Decree constitutes the final, complete and exclusive
22 agreement and understanding of the Parties with respect to the settlement
23 embodied in this Decree and the subject matter of this action. The Parties
24 acknowledge that there are no representations or understandings relating to
25 this action and settlement other than those expressly contained in this
26

1 Decree.

2 **R. Modification**

3 93. This Decree may not be modified by the Parties except by
4 written amendment signed by the Parties and shall be effective upon
5 approval by the Court.

6 **S. Retention of Jurisdiction and Dispute Resolution**

7 94. The Court shall retain jurisdiction over this matter for the
8 purpose of interpreting and enforcing the terms of the Decree. In the event
9 of any dispute regarding implementation of or compliance with the Decree,
10 the Parties shall first attempt to informally resolve the dispute through
11 meetings between the Parties. Any Party may initiate informal dispute
12 resolution by serving Notice of a request for dispute resolution pursuant to
13 Paragraph 96 of this Decree. If no resolution is reached within thirty (30)
14 days from the date that the notice of dispute is served, the Parties may
15 resolve the dispute by filing motions with the Court.

16 **T. Termination**

17 95. This Decree and the obligations set forth herein shall terminate
18 on December 31, 2028, except in the event that the annual groundwater
19 monitoring obligations in Paragraph 30 or Paragraph 31 are triggered. If
20 the annual groundwater monitoring obligations in Paragraph 30 or
21 Paragraph 31 are triggered, all obligations set forth in this Decree other
22 than those in Paragraph 30 or Paragraph 31 shall terminate on December
23 31, 2028, and the Decree and the remaining Paragraph 30 or Paragraph 31
24 obligations shall terminate upon Defendant's completion of the
25 requirements in Paragraph 30 or Paragraph 31.

mweinberg@perkinscoie.com

V. Effective Date and Final Judgment

97. This Decree shall constitute a final non-appealable judgment in this action and shall take effect on the day it is entered by the Court. The Court shall retain jurisdiction to enforce the terms of this Decree and to resolve any disputes arising hereunder until the Decree has been terminated in accordance with Paragraph 95 of this Decree.

WE HEREBY CONSENT to the entry of this Consent Decree.

IT IS SO ORDERED: Dated and entered September 17, 2020.



A handwritten signature in blue ink that reads "Thomas O. Rice". The signature is written in a cursive, flowing style.

Thomas O. Rice
United States District Judge

**COMMUNITY ASSOCIATION FOR THE RESTORATION
OF THE ENVIRONMENT, INC.**

Signature: [on file at ECF No. 2-1 at 41]

Name (print):

Title:

Date:

FRIENDS OF TOPPENISH CREEK

Signature: [on file at ECF No. 2-1 at 42]

Name (print):

Title:

1 Date:

2
3 **CENTER FOR FOOD SAFETY**

4 Signature: [on file at ECF No. 2-1 at 43]

5 Name (print):

6 Title:

7 Date:

8
9 **SUNNYSIDE DAIRY, LLC**

10 Signature: [on file at ECF No. 2-1 at 44]

11 Name (print):

12 Title:

13 Date:

14
15 *****EXHIBITS 1 THROUGH 13 ARE ON FILE HEREIN AND**
16 **FILED AT ECF NOS. 2-2 THROUGH 2-14 AND ARE HEREBY**
17 **INCORPORATED IN FULL BY THIS REFERENCE. Signed**
18 **Thomas O. Rice, United States District Judge.*****
19
20
21
22
23
24
25
26